IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1448 OF 2006

1. Gaurav Ashwin Jani, of Bombay, Indian Inhabitant, residing at 63 - J Gitanjali Society, Raheja Township, Malad - East, Mumbai-97.

2. Anand Patwardhan, of Bombay, Indian Inhabitant, residing at 22, Lokmanya Tilak Colony Marg No.2, Dadar (East), Mumbai-4000 014.

3. Simantini Dhuruv, of Bombay, Indian Inhabitant, residing at 3, Navalkar Building, 29-B, Opera House, Bombay. ..PETITIONERS.

Versus

1. The Director, Directorate of Film Festivals (NFA) Ministry of Information and Broadcasting, Siri Fort Auditorium Complex, New August Kranti Marg, New Delhi 1100 49.

2. The Ministry of Information and Broadcasting, the Government of India, New Delhi.

3. Union of India, through Law Officer, Legal Department, Ayakar Bhavan, New Marine Line, Mumbai-400 032. ..RESPONDENTS.

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Mr.P.A.Sebastian,Advocate for the Petitioners.
Mr.Y.R.Mishra with Mr.N.R.Prajapati, Advocates

for the Respondents.

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CORAM : **F.I.REBELLO AND SMT.V.K.TAHILRAMANI,JJ.**

DATED : **JULY 27, 2006.**

JUDGMENT (PER F.I.REBELLO,J.)

1. The petitioners herein have approached this Court challenging Regulations 10(d) and 10(e) of he 53rd National Film Awards Regulations as violative of Article 14 and Article 19(1)(a) of the Constitution of India. Consequential relief by way of mandamus have also been prayed for. The two Regulations which are subject matter of this Petition reads as under :

"ELIGIBILITY :

> **10(d)** Films made in any Indian language, shot on 16 mm, 35 mm or in a wider gauge or digital format but released on a film format and certified by the Central Board of Film Certification as a feature film or featurette are eligible for feature film section. In the case of award for Best Children's Film only such films shall be eligible as have been certified by the Central Board of Film Certification as children's films. The phrase 'any Indian language' would mean all official languages of the State/Union Territories of the Indian Union, all other Indian languages included in Schedule VIII of the Constitution of India and such other languages and dislects that may be permitted by the Government of India from time to time. (Emphasis supplied)

> **10(e)** Films made in any Indian language, shot on 16 mm, 35 mm or in a wider gauge or digital format but released on film format and certified by the Central Board of Film Certification as a Documentary/Newsreel/Non-Fiction/Short-Fiction are eligible for non-feature film section. The phrase 'any Indian language' would mean all official languages of the State/Union Territories of the Indian Union, all other Indian languages included in Schedule VIII of the Constitution of India and such other languages and dialects that may be permitted by the Government of India from time to time." (emphasis supplied)

2. Some of the averments in the Petition are as under : the first petitioner who is a Documentary Film Maker has recently made a documentary called "Riding solo to the top of the world". This documentary has won the Best Documentary Award - National Category and also National Critics Award at Mumbai International Film Festival organised by the Government of India in February, 2006. The second petitioner is a well known documentary filmmaker whose documentaries are internationally acclaimed for the democratic and secular message they convey. The petitioner No.2 points out that his several films have been selected as the best documentary of the year concerned and have also been awarded the President's gold medal. The third petitioner is also a documentary filmmaker of repute having

won a Filmfare Award in India and also the Earthvision award in Japan.

3. Respondents, it is contended, organise National Film Awards festivals (NFA) from time to time with a view to encourage the production of films of aesthetic and technical excellence and social relevance contributing to the understanding and appreciation of cultures of different regions of the country in cinematic form, thereby also promoting integration and unity of the Nation. The last date for the entry of films for the 53rd NFA was 19th May, 2006. Regulation 10(e) which is already been reproduced, requires that films made in any Indian language, shot on 16mm, 35mm or in a wider gauge or digital format but released on film format and certified by the Censor Board of Films Certification as a documentary / Newsreel / Non-Fiction / Short Fiction are eligible for non - feature film section. The documentary of petitioner No.1 was shot on digital format and is also released on the digital format. This makes a documentary ineligible for entry to the 53rd NFA. If the film is to be converted from digital format to a film (celluloid) format of 16 mm or 35 mm

itself will cost the first petitioner an amount approximately Rupees 25 Lakhs. The petitioner does not have that much amount at present, and which deprives him of an opportunity to compete for the 53rd NFA. It is pointed out that in the beginning all films were shot on celluloid. By 2004, especially for documentary and low-budget filmmakers making films on celluloid was becoming technologically outdated and unnecessarily expensive. On account of that, representation was made to the Government of India, which accepted the representation and permitted the films made in any Indian language shot on 16 mm, 35 mm or in a wide gauge, or digital format but released on either film format or Betacam-SP (broadcast quality format).

. After the Petition was filed, on May 19, 2006 a statement was made on behalf of the Respondents that the issue of permitting films in digital format was under consideration. The Respondents since then have made eligible the documentary films on digital formats and as such the challenge on that count no longer survives.

4. The only challenge which now survives is the issue as to whether the petitioners have to have the requirement of the Censorship Certificate for entering their films for the NFA. We may gainfully refer to the provisions of Section 9 of the Cinematography Act, 1952, which hereinafter shall be referred as the Act. The said Section reads as under :

> "**9. Power to exempt.-** "The Central Government may, by order in writing exempt, subject to such conditions and restrictions, if any, as it may impose, the exhibition of any film or class of films from any of the provisions of this Part or of any rules made thereunder."

. In other words there is power conferred in Central Government to exempt a class of films from any of the provisions of Part-II. Part-II deals with the requirement of certification of films for public exhibition.

5. The petitioners before us have averred and produced material to indicate that this power

under Section 9 of the Act, has been exercised by the Government of India in the matter of film festivals, where films both international and national are exhibited. Our attention has been invited to the entry form for MIFF 2006. The relevant clause is Clause 15 which reads as under :

> "**15.** Censorship will not be applicable to **ANY** films/videos entered in the festival."

. This is pursuant to regulations made by various festival authorities for according exemption from the process of certification for films for exhibition in their festivals. A Committee was formed which submitted its report to the Government on 16.11.2005. Based on that guidelines have been framed and notified. Clause 2 and 3 reads as under :-

> "2. After detailed deliberations, the Committee submitted its report to the Government on 16.11.2005 with certain recommendations which have since been accepted. The following guidelines are

notified with immediate effect :

(i) In those festivals which are non-commercial in nature and viewership is confined to delegates (definition of delegates would include filmmakers, media students, critics, film theorists, film lovers and all those associated with the production and business of film and members of the press duly registered with the festival authorities as well as its jury), the Government would grant exemption for both Indian and foreign films. However, the exemption would be subject to fulfilment of the conditions prescribed in para 3 below.

(ii) The request for exemption from the process of certification will be disposed of within 15 days from the date of receipt of the proposal complete in all respects from the Director of the Festival.

(iii) In exceptional cases, the Ministry of I & B will have the powers to reject, for

reasons to be recorded in writing, the request for exemption to any film(s)) if, in its opinion, it would impinge on the security or integrity of the country or affect law and order or affect relations with other countries.

(iv) In case of rejection, the Director of the Festival shall have the option to appeal to the next higher authority in the Ministry of I & B i.e. the Additional Secretary/Secretary, as the case may be, who shall dispose of the appeal within 15 days from the date of receipt in the Ministry.

3. In order to consider the request for exemption from the process of certification for films to be screened in festivals, the following documents shall be sent by the Director of the Festival addressed to Joint Secretary (Films) along with the request for exemption :

(i) List of films to be screened in the

festival.

(ii) Synopsis of each of the films

(iii) Composition of the Preview Committee, which should comprise persons who are related to the film industry or are critics/writers connected with films.

(iv) Report of the Preview Committee certifying that the films have been recommended for exhibition at the festival.

(v) Certificate from the Director of the Festival to the effect that the screening of such films would be limited to delegates (definition of delegates would include film-makers, media students, critics, film theorists, film lovers and all those associated with the production and business of film and members of the press duly registered with the festival authorities as well as its jury.)

(vi) Certificate from the Director of the

Festival to the effect that the festival is non-commercial in nature."

6. Under the Regulations framed by the 53rd NFA the films produced by students of a film institute running diploma/degree courses and which are recognised by the Government of India are eligible to enter without certification by the Central Board of Film Certification, provided a specific certificate from the Head of the organisation to the effect that the film has been produced by the producers within the eligibility period, is sent alongwith entry form. Similarly, entries made by Doordarshan for the non feature film section are eligible to enter without Film Certification. The said Regulations 10(f) and 10(g) reads as under :

ELIGIBILITY

"**10(f)**. A film produced by a film institute running diploma/degree courses run by it which are recognized by the Government of India shall be eligible even without certification by the Central Board

for Film Certification, provided a specific certificate from the Head of the organization to the effect that the film has been produced within the eligibility period, is sent along with the entry form.

10(g). Entries made by Doordarshan for the non feature film section shall be eligible without certification by Central Board of Film Certification provided that a specific certificate, from Director General, Doordarshan to the effect that the non feature film has been produced within the eligibility period, is sent along with the entry form."

7. It is the case of the petitioners, therefore, that the films produced by them, in the case of national film festival competition are eligible to be entered without the requirement of censorship certificate. It is pointed out that viewing of films screened at Festivals is limited to a selected audience like film critics and film theorists. The Committee noted that at film festivals, the viewership is limited to delegates

who includes film makers, media students, critics, film theorists, film lovers and all those associated with the production and business of film. It is therefore submitted that it will be totally arbitrary on the part of the Respondents of imposing a condition or a restriction that only films which have been certified by the Central Board of Film Certification between 1st January, 2005 and 31st December, 2005 can be entered for NFA. This, it is submitted has neither any rational nor can it be said that films entered in the film festivals constitute a class by themselves as distinct from the films which can be entered for NFA as the producers can enter the same films both for the National Film Festivals as also NFA. The failure to grant exemption for N.F.A. is discriminatory, and hence violative of Article 14 of the Constitution of India. The restriction, it is also submitted, amounts to an unreasonable restriction on the petitioners right of freedom of speech and expression and on that count also such a condition ought to be held to be unreasonable. The petitioners submit that the Respondents must apply the same conditions for entry to NFA is concerned which conditions are

applicable in the case of the international film festivals. Apart from that it is pointed out that when the film is entered in NFA it is to be viewed only by the judges whereas for a film festival it is viewed by a large number of delegates. The judges consist of a limited panel. In these circumstances, insisting on the petitioners to have a censorship certificate is unreasonable and/or arbitrary. It is pointed out that after the film is selected for the award, it is open to the Respondents before the film is screened to the public to insist on a certificate under Part-II of the Act.

8. On behalf of the Respondents, Manoj Srivastava, Deputy Director, Directorate of Film Festivals has filed an affidavit, opposing grant of the relief. It is firstly submitted that the decision and guidelines are reasoned policy of the Government of India and in these circumstances this Court in the exercise of its extraordinary jurisdiction should not interfere with the said policy guidelines. For that purpose reliance is placed on the judgment of the Apex Court in Gyanprakash Vs. Union of India (1997) 11 SCC 670.

The Supreme Court held, that the Supreme Court or the High Courts should not interfere in the policy matter unless such policy violates the fundamental right of the petitioners. Reference is also made to the judgment in Balco Employees Union Vs. Union of India. It is not necessary to refer to other judgments. The policy is then set out as under :

> "That the policy framework relates to, and specifically pertains to, requests made by ‘Festival Directors’ of various "FESTIVAL AUTHORITIES" in India who organise film Festivals for a specific period of days, wherein they intend screening Indian and foreign films that do not have certification in India. However for public screening in India, all necessarily require certification from the Central Board of Film Certification."

. The Films which are exempted and exhibited at film festivals are only screened to registered delegates. Reference is then made that juries are set up with the objective and/or purpose for

selecting technically and aesthetically good films as defined in the Gazetted Regulations of the scheme of ‘National Film Awards’, the Indian Panorama etc. . Once the juries finally select the films, The President of India awards them and these films are later screened for the ‘general public’ at large. The Indian Panorama films, after selection by a jury are also being sent to various international film festivals. For all the aforesaid reasons, it is submitted that, this Petition ought to be dismissed.

9. At this stage, we may clarify that the Respondents seem to be confused on the issue of films for the Indian Panorama. As explained on behalf of the petitioners at the bar and which has not being denied on behalf of the Respondents, that this has nothing to do with the films which did not have the certificate under Part-II. The films in the Indian Panorama are the films which have normally obtained certificates under Part-II. The reference to Indian Panorama discloses total non application of mind on the part of the Respondents, whilst filing their reply.

10. The limited issue therefore before us is whether the Respondents' policy of restricting the participation to only those films which have been certified by the Censor Board is legal, valid and/or is arbitrary, unreasonable and violative of the petitioners' right to freedom of speech and expression. The expression 'freedom of speech' in our opinion is wide enough and connotes any form of expression including by making of films. The right of freedom of speech is guaranteed by the Constitution of India. Is the requirement of certificate from the Censor Board of Films for entry to the 53rd NFA amounts to violation of the right guaranteed under Article 19(1)(a) of the Constitution of India ?. Secondly, would exempting screening of films at International or National film festivals without a certificate from the Board as also exempting films made by film institutes and non-feature films made by Doordarshan at 53rd NFA, would amount to discrimination, being unreasonable and/or arbitrary and consequently violative of Article 14 of the Constitution of India ?

11. We shall firstly deal with the contention

urged by the petitioners that Article 14 is violated. We have already adverted to the fact that there is power in the Central Government to exempt the films from the purview of Part-II. The Government of India on representation by the film industry has so done for film festivals screening international and national films. In other words, the Respondents themselves are of the opinion that films screened at a film festival constitutes a class by themselves and the films can be exhibited without a censorship certificate. The audience at such festivals are delegates and as pointed earlier not necessarily members of jury. Insofar as NFA 2006 is concerned, two categories of films covered by regulation 10(f) & 10(g) can enter their films without certificate. These films will be viewed by the same jury as other films entered by the petitioners and others. Whilst films entered by categories 10(f) & 10(g) will be judged by the jury without a certificate, the films made by the petitioners would require a certificate from the Censor Board. The exemption granted to films falling in regulation 10(f) and 10(g) of NFA Regulations and exemption to films from Certificate for MIFF 2006 and insistence on

certification for films by other participants to NFA is clearly discriminatory being arbitrary. Would not this insistence by the Respondents be arbitrary and/or discriminatory in the absence of any explanation. It was for the Respondents, after the petitioners have discharged their burden to show that such classification is reasonable and has nexus with the object, which is selecting the best films for awards. The Respondents ought to have discharged this burden, by showing that the class which is exempted, amounts to a different class having characteristics different from the class which is protected and further said classification has a reasonable nexus with the object. Classification is merely a judicial formula for determining whether the exemption action is arbitrary. In the instant case the object of selecting the best films by the jury is defeated, if some films can be judged without certificates and others only after a certificate.

12. In our opinion if a jury has to examine and give an award to the film, it must be in a position to view it, in its entirety by

considering all features, which go into the making of films and not a revised version which a censorship board may do by imposing cuts in the films. The Respondents themselves based on representation by the members of the film industry, took a decision that certificate of Censor Board is not required for Film Festivals as set out in the policy decision as also for film by a class of persons for NFA-2006. No explanation has come why the other films are not allowed to be entered without a certificate of the Censor Board. This would be clearly amount to practicing discrimination. The law on the subject of classification has been explained and reiterated in **Shashikant Laxman Kale & Anr. Vs. Union of India**, reported in (1990) 4 SCC 360. The law is also clear that equals cannot be treated as unequals as such treatment would be violative of Article 14 of the Constitution of India. What is the difference between the films of producers excluded from exemption and those who have been excluded. In matter of Art, State Institutions like Doordarshan or film schools can have no special protection. The historical truth if one may state is that Art in such institutions rarely

blooms it mostly wilts. Who makes the film is immaterial. A jury has to view and judge the films through the eyes of the artist and what he seeks to convey to the audience and as made in its original form. The source from where it is produced therefore becomes irrelevant. The film is to be judged by only a select jury and is not being viewed by the public at large. Why should the jury then have to view through the eyes of the Censor Board, when the same jury in case of films by two other producers can view it without a certificate. Any other view of the matter would result in the jury not being able to examine the film from the perspective of the film maker and the concept based on which he has made it. The selection procedure for the award in such circumstances would be treating unequals as equals. This is clearly arbitrary and violative of Article 14 of the Constitution of India. Our Constitution makers, when they enacted Part III of the Constitution foresaw freedoms expanding and that art cannot be repressed, except by reasonable restrictions. Once the respondents themselves have accorded exemptions from certificates for film festivals and these exemptions can apply to

the very film, if the petitioners screen them at film festivals where a larger audience can view them, we find the action of the Respondents in refusing to exempt or exercise their power under Section 9, insofar as film belonging to a class of producers at NFA, as being totally arbitrary being discriminatory.

13. In this view of the matter, therefore, the petition insofar as the challenge under Article 14 is concerned to Regulations 10(d) & 10(e) will have to be allowed. We, however, make it clear that the organisers can subject the films entered to the same tests as laid down by the Respondents in Clause-8 of Eligibility and Regulations for MIFF - 2006.

14. The second issue whether the restriction as imposed can be said to be violative of Article 19(1)(a) of the Constitution of India. In our opinion, considering that we have upheld the challenge under Article 14, it is not necessary for us, at this stage, to deal with the challenge under Article 19(1)(a) of the Constitution of India.

15. For all the aforesaid reasons, Rule is made absolute in the following terms : the words 'and certified by the Central Board of Film Certification' in Regulations 10(d) & 10(e), are held to be violative of Article 14 and consequently void. Regulations 10(d) and 10(e), shall be read without those words. Rule is made also absolute in terms of Prayer Clause (b).

16. The films of the petitioners and other similarly situated, should be allowed to be entered by the Respondents for N.F.A.2006 in digital form and without a certificate from the Central Board of Film Certification. It will be open to the Respondents to impose conditions like Regulation 8 of MIFF-2006. In the circumstances of the case, there shall be no order as to costs.

[F.I.REBELLO,J.]

[SMT.V.K.TAHILRAMANI,J.]